



BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-406]

Substances Temporarily Controlled under Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule; technical amendments.

SUMMARY: This final rule makes technical and conforming amendments to the Drug Enforcement Administration regulations listing substances temporarily controlled under schedule I of the Controlled Substances Act. This final rule eliminates references to 7 substances that were previously subject to temporary control, but which have since been permanently controlled under schedule I, and redesignates 23 other substances that are currently temporarily controlled under schedule I. This action makes no substantive changes to the affected regulation.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Imelda L. Paredes, Office of
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SUPPLEMENTARY INFORMATION:

Legal Authority

The DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. Titles II and III are referred to as the “Controlled Substances Act” and the “Controlled Substances Import and Export Act,” respectively, and are collectively referred to as the “Controlled Substances Act” or the “CSA” for the purpose of this action. 21 U.S.C. 801-971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, currently accepted medical use, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all controlled substances is published at 21 CFR part 1308. 21 U.S.C. 812(a).

The CSA provides the Attorney General with the authority to temporarily control a substance under schedule I for two years without regard to the requirements of 21 U.S.C. 811(b) if he/she finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h). If proceedings to permanently control a substance are initiated pursuant to 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary control for up to one year. 21 U.S.C. 811(h)(2). The Attorney General has delegated this authority to the Administrator of the DEA. 28 CFR 0.100.

Technical Amendments

The Synthetic Drug Abuse Prevention Act of 2012 (SDAPA) became effective on July 9, 2012.¹ SDAPA amended the CSA by permanently controlling “cannabimimetic agents” and 26 other specific substances in schedule I. At that time, some of the 26 permanently controlled substances were temporarily controlled and listed in 21 CFR 1308.11(g), including the following substances: 1-pentyl-3-(1-naphthoyl)indole (JWH-018); 1-butyl-3-(1-naphthoyl)indole (JWH-073); 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200); 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol or CP-47,497 C8 homologue);² 4-methyl-N-methylcathinone (mephedrone); and 3,4-methylenedioxypyrovalerone (MDPV).³

On January 4, 2013, the DEA published a final rule permanently placing cannabimimetic agents and all 26 substances specified in SDAPA into schedule I (including the 6 substances noted above that were previously temporarily controlled).⁴

The substance 3,4-methylenedioxy-N-methylcathinone (methyldone) was not permanently controlled through SDAPA. However, DEA temporarily controlled methyldone on October 21, 2011, pursuant to 21 U.S.C. 811(h), and listed it in 21 CFR 1308.11(g)(7).⁵ On January 4, 2013, subparagraph (g) of 21 CFR 1308.11 was redesignated as subparagraph (h), and methyldone was renumbered in section 1308.11(h)(1); it also inadvertently remained on the list of temporarily controlled

¹ Pub. L. 112-144, title XI, subtitle D, sections 1151-1153.

² See “Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I of the Controlled Substances Act,” 76 FR 11075, Mar. 1, 2011 and “Schedules of Controlled Substances: Extension of Temporary Placement of Five Synthetic Cannabinoids Into Schedule I of the Controlled Substances Act,” 77 FR 12201, Feb. 29, 2012.

³ See “Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cathinones Into Schedule I,” 76 FR 65371, Oct. 21, 2011.

⁴ “Establishment of Drug Codes for 26 Substances,” 78 FR 664, Jan. 4, 2013.

⁵ “Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cathinones Into Schedule I,” 76 FR 65371, Oct. 21, 2011.

substances in section 1308.11(h)(7). The DEA permanently controlled methylone in schedule I by a final rule published in the *Federal Register* on April 12, 2013.⁶

Because the above noted substances are permanently controlled in schedule I, the DEA is making technical and conforming amendments to the regulations by removing the above referenced 7 substances (JWH-018; JWH-073; JWH-200; CP-47,497 C8 homologue; mephedrone; MDPV; and methylone) from the list of temporarily controlled substances and redesignating the numerical order of the remaining controlled substances that are currently subject to temporary control.

Regulatory Analyses

The Administrative Procedure Act

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (APA), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest under 5 U.S.C. 533(b)(3)(B). This rule provides technical and conforming amendments to the DEA's regulations and imposes no new or substantive requirement on the public or DEA registrants. As such, the DEA has determined that notice and opportunity for public comment on this rule are unnecessary. In addition, because this is not a substantive rule and as the DEA finds good cause under 5 U.S.C. 553(d)(3) for the above reasons, this final rule shall take effect upon the date of publication in the *Federal Register*.

Executive Orders 12866 and 13563

The Administrator certifies that this is not a significant regulatory action within the

⁶ "Schedules of Controlled Substances: Placement of Methylone Into Schedule I," 78 FR 21818, Apr. 12, 2013.

meaning of Executive Order 12866 and the principles reaffirmed in Executive Order 13563, as it makes only technical amendments to the current regulations. Such actions are exempt from review by the Office of Management and Budget (OMB).

Executive Order 12988

This rule meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This rule does not have federalism implications warranting the application of Executive Order 13132. This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act of 1995

This rule does not involve a collection of information within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3521.

Executive Order 13175

This rule does not have tribal implications warranting the application of Executive Order 13175. The rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Congressional Review Act

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308— SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

§ 1308.11 [Amended]

2. Amend § 1308.11 by removing paragraphs (h)(1) through (8) and redesignating paragraphs (h)(9) through (31) as paragraphs (h)(1) through (23), respectively.

Dated: March 12, 2015

Michele M. Leonhart,
Administrator.

[FR Doc. 2015-06460 Filed: 3/19/2015 08:45 am; Publication Date: 3/20/2015]